

IN THE HIGH COURT OF BOMBAY AT GOA.

LETTERS PATENT APPEAL NO. 3 OF 2002.

1. Smt. Delfina Gomes Pinto,
 2. Shri Bernardo Raimondo
Socorro Gomes Pinto,
 3. Shri Bernardo Justino
de Fatima Gomes Pinto,
all r/o House No. 114,
Nagmodem, Sinquetim,
Navelim.
- ... Appellants.

Versus

1. Smt. Safiabi, widow
of Shaikh Abdul Razak,
 2. Rabu (Rabeabi) Razak,
 3. Kassim Razak,
 4. Liakat Razak,
 5. Sofia Razak,
 6. Ayub Razak,
 7. Aisha (Aishabi) Razak,
all residents of H. No.
50(120), Ward No. 7,
Shirvodem, Navelim.
 8. Additional Rent Controller-III,
South Goa, Margao.
 9. Administrative Tribunal,
Panaji.
- ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Shivan Dessai,
Advocate for the Appellants.

Mr. S.S. Kantak and Ms. Gauri Bhosle, Advocates for the
Respondents 1 to 7.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 4th August 2003.

ORAL JUDGMENT (PER REBELLO, J.)

The predecessor in title of the appellants late Felix Gomes through his lawyer issued notice to respondent no. 1 demanding arrears of rent in respect of the suit tenement from February 1976 to March 1980. It was the case of the appellants that the suit tenement

had been leased to late Abdul Razak, husband of respondent no. 1, on the monthly rent of Rs. 8/-. Abdul expired prior to the institution of the proceedings for eviction. The said proceedings were filed on 29th December 1981 on the ground of non-payment of rent and also on the ground that the suit tenement was required for the purpose of demolition and re-construction being over 160 years old. The respondents filed their reply and contended that they were mundkars of the suit tenement and they were paying ground rent of Rs. 8/- per month. They further pleaded that the Rent Controller had no jurisdiction to entertain the eviction application. They prayed that a preliminary inquiry be held in the matter. An inquiry was held under Section 21 of the Rent Act to find out whether denial of title of the landlord by the respondents was bonafide or not. On 27th December 1990, the Rent Controller held that the claim of the respondents claiming mundkarship was not bonafide within the meaning of Section 21 of the Goa Rent Act whilst holding that there was a landlord-tenant relationship between the parties and ordered eviction of the respondents under Section 22(2)(g) of the Goa Rent Act.

Respondent no. 1 had filed a mundkar case, being, Case No. MUND/21/80, against the late Felix in the Court of the Mamlatdar of Salcete, in June 1980. On

13th June 1980, an ex parte injunction was granted by the Mamlatdar restraining the late Felix from interfering with the execution of repairs being carried out to the suit tenement by the respondent no. 1. On 23rd July 1987, the Mamlatdar, on examining the evidence adduced, held that the respondents were not mundkars in respect of the suit tenement and dismissed the application of the respondents as against mundkars. No further steps were taken on the said Order, which became final.

2. Being aggrieved by the Order of the Rent Controller ordering the eviction, dated 27th December 1990, the respondents herein preferred an appeal before the Administrative Tribunal. The Tribunal, by its Order, dated 18th August 1997, dismissed the appeal, against which a Writ Petition came to be filed, being Writ Petition No. 96 of 1998, under Articles 226 and 227 of the Constitution of India. A learned Single Judge of this Court, by Order, dated 20th September 2001, was pleased to allow the Writ Petition. The issue considered by the learned Single Judge was whether the Tribunals below were right in passing the decree of eviction under Section 22(2)(g) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968. The learned Single Judge held that the plea by the petitioners before him did not amount to denial of

title of the landlords/respondents before him and in that view of the matter allowed the Writ Petition and made rule absolute. It is against the said Order that the appellants herein have preferred the present appeal.

3. On behalf of the appellants, their learned counsel has contended as under:- The respondents claim that they are mundkars under the Goa Mundkar Act amounts to an express denial of the appellants' title as landlords of the suit tenement, In a case where the tenant denies the title of the landlord, the Rent Controller is entitled to hold inquiry under Section 21 of the Goa Rent Act in order to decide whether the denial is bonafide or not and to record a finding to that effect. If the Controller records a finding that the denial was bonafide, then the landlord is entitled to sue for eviction of the tenant in a Civil Court and the Civil Court can evict the tenant on any of the grounds under Section 22 or 23 of the Goa Rent Act, eventhough a Civil Court finds that the denial of title was bonafide not involving forfeiture of the lease. It is then pointed out that for the purpose of finding out whether the tenant has denied the title of the landlord it is essential to understand the definition of landlord, as explained in Section 2(j) and the definition of tenant in Section 2(i). It is pointed out that Section 2(j) includes not only the owner of the

building but also includes his agent or any other person who actually and factually receives rent whether on his own account or on account of or on behalf of or for the benefit of any other person and includes even a trustee, guardian or receiver. It is, therefore, submitted that the definition is an inclusive definition and denial of title of landlord amounts to denial of right of a person who is receiving rent in respect of a premises to receive such rent. The definition of landlord in 2(j) begins with the words 'unless the context otherwise requires' and so read it is to be read throughout the Act unless any other provision under the Act in the context differently expresses the meaning of landlord as expressed in the Act. It is then submitted that the doctrine of denial of title originates from Section 116 of the Evidence Act which embodies the rule of estoppel. The rule of estoppel as incorporated under Section 116 is not exhaustive and it may be extended or suitably modified in its application to other situations as well. Clause (g) of Section 111 of the Transfer of Property Act contemplates two fact situations, when it can be said that a lessee has renounced his character and which are (1) when the lessee sets up a title in a third person or (2) when he claims title in himself and in either case the tenant has disputed and denied the title of his landlord. It is then submitted that the finding of the learned Judge that there is no denial of the

relationship of tenant and landlord is not correct. The Rent Controller had held inquiry to decide landlord/tenant relationship and after considering the evidence adduced by the parties and the order passed by the Mamlatdar that the respondents are not mundkars, has held that the denial of title was not bonafide. The finding was arrived at after appreciating the evidence of both the tenant and the landlord. It is also submitted that the respondents had claimed to be the owners of the suit tenement. It is then submitted that the finding, that the claim of mundkarial right by the respondents does not amount to denial of title of the landlord, is erroneous. Reliance is placed on Judgments, which will be adverted to in the course of discussion.

On the other hand, on behalf of the contesting respondents, it is contended that a learned Single Judge had recorded a finding that the Tribunals below had not given any finding of relationship of landlord-tenant between the parties and that it was on the respondents (appellants herein) to prove that there was relationship of landlord and tenant. It is then submitted that the remand was not made since the learned Single Judge held that raising the issue of mundkarship does not amount to denial of title of the landlord. Our attention is invited to the finding of the learned Single Judge that

the Rent Act contemplates denial of title of the landlord and not as the landlord and, it is in these circumstances that the learned Single Judge did not examine whether the denial of title was bonafide, as in view of the finding that there was no denial of title, the question did not arise. It is then submitted that in the appeal the issues which arise are whether raising of the issue of mundkarship amounts to denial of title of the landlord? if the answer is in the affirmative, whether the denial in the present case is bonafide? Consequently whether the Judgments of the Rent Controller and the Administrative Tribunal are to be set aside? Learned counsel has drawn our attention to the proviso to Section 21 of the Rent Act. It is pointed out that the said proviso is based on the principle of estoppel. A perusal of the language of the proviso, it is pointed out, leaves no doubt that claiming a status and denial of being a tenant will not amount to denial of title of the landlord. Reliance is placed on the Judgments, which will be adverted to later. It is, therefore, submitted that it is clear that the title of the landlord must be denied by a tenant and there should not be any dispute as regards tenancy. It is submitted that the proviso will be attracted when a tenant denies the title of the landlord by contending that a person seeking his eviction is not entitled to do so and that person is not entitled to collect the rent from him. It

is submitted that the rule of estoppel will apply only when the tenant acts as a lessee and in that capacity refuses to accept the title of his own lessor. The rule of estoppel it is contended under Section 116 does not debar any defendants from making out the case that he has never been a lessee, and the lease purporting to make him a lessee was never a valid document, and in that behalf to plead such circumstances as may invalidate the lease or otherwise make it null and void. Title in this context, it is contended, does not mean mere ownership if the real purpose of Section 116 is understood. Ownership is not really what matters. By title of the landlord what is meant is whether that person is the owner or not but whether that person has created the tenancy and satisfies the definition of 'landlord' under the Rent Act. If he does, then the tenant would be precluded from disputing that he is not his landlord and if the tenant does so, then proviso to Section 21 will be attracted. It is contended that the scope of the proviso is not to permit the tenant to approbate and reprobate. If the tenancy is accepted from one particular person, the tenant thereafter cannot turn around and deny that the person is not his landlord. A person creating the tenancy may be the owner or may not be the owner but insofar as the tenant is concerned he cannot challenge the authority of a person as a landlord who inducted him in the tenancy.

It is submitted that this is a limited scope of the proviso of the Rent Act and no extended meaning can be given to it. The Rent Controller, it is submitted, has jurisdiction to pass orders of eviction only against persons who are tenants and, if the persons are not tenants, then the Rent Controller ceases to have jurisdiction. It is then submitted that if this Court holds that the respondents have denied the title of the appellants, the question is whether the denial is bonafide. It is submitted the learned Single Judge did not address himself to this question in view of his finding that there is no denial of the title of the landlord. It is then submitted that the matter will have to go back to the learned Single Judge for deciding the challenge on the ground of bonafides. The material on record it is pointed out shows that the plea was bonafide and in view of that matter the appeal should be dismissed.

4. With the above, we may proceed to examine the issues which arise, which may be formulated as under:-

(a) Whether pleading the status of mundkar, would amount to denial of title of the landlord and would attract the proviso to Section 21 warranting the Rent Controller to hold an inquiry and record a finding whether denial or claim is bonafide?

(b) Considering the finding by the learned Single Judge that the Rent Controller has not decided the issue, whether there is prima facie relationship of landlord and tenant between the parties and whether the matter has to be remanded to the Rent Controller for a finding on this count?

(c) What is the appropriate Order to be passed in the present proceedings, considering that the appellants had filed an application for eviction on the ground of non-payment of rent and seeking possession for re-construction?

5. To answer the first question we have to first consider Section 21 and its proviso which reads as under:-

"21. Bar on eviction of tenants.-Notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter.

Provided that where the tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in this Chapter even though the court finds that such denial does

not involve forfeiture of the lease or that the claim is unfounded."

It is, therefore, clear from the said Section itself that the plea raised by the tenant must amount to denial of the title of the landlord or claims a right of permanent tenancy. In the instant case we are not on the issue of claim of right of permanent tenancy. The limited issue is whether there is denial of the title of the landlord. If there is a denial of the title of the landlord, the Rent Controller then has to record a finding whether the denial or claim is bonafide and if he records a finding to that effect, the landlord is entitled to sue for eviction of the tenant in a Civil Court. The Civil Court can then pass a decree for eviction on any of the grounds mentioned in the Chapter even though the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. By virtue of this proviso the bar otherwise created by Section 56 is lifted and the Civil Court has been conferred jurisdiction to decide the suit for eviction. In that suit for eviction, the Civil Court can pass a decree on any of the grounds mentioned in Chapter V of the Rent Act, even if the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. In the instant case the respondent no. 1 as early as June 1980 had raised a plea that they were mundkars. The appellants herein were contending that the rent being paid by the

respondent no. 1 to the appellants was in respect of the lease of the suit tenement. The contention of respondents before the Rent Controller in the reply filed on 1st March 1982 was that they were paying ground rent of Rs. 8/- per month to the late Felix. They further claimed that they were mundkars and in these circumstances, the Court would have no jurisdiction. In other words the ownership of late Felix to the land has not been denied. It has also not been denied that for the structure occupied by the land, the owner was entitled to claim ground rent at the rate of Rs. 8/- per month. What was contended was that the occupation of the premises by respondent no. 1 was not in her capacity as tenant but in her capacity as mundkar. Even in case of a person who holds land on lease and was paying ground rent by virtue of the proviso of the Mundkar Act such a person was deemed to be a mundkar. The effect of this proviso was that the relationship of landlord and tenant would be substituted by that of a mundkar.

We then have the definition of landlord and tenant. Landlord is defined under Section 2(j) to mean:-

"'landlord' means a person who, for the time being, is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of, or on behalf of, or

for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant"

Tenant is defined under Section 2(p) to mean:-

" 'tenant' means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order or decree for eviction has been made."

A look of the definition of landlord would, therefore, show that it is an extended meaning and includes not only the owner of the land but by a deemed fiction any person entitled to receive the rent of any building. Therefore, for a respondent in a proceeding to fall within the expression 'denies the title of the landlord' there must be a denial, that such a person who is receiving or is entitled to receive rent, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver. Therefore, what is contemplated is that such a person is not entitled to receive rent for the premises let out to a tenant. Tenant has been defined to mean a person on whose account or on whose

behalf the rent of any building is, or but for a special contract would be payable.

Therefore, if a person pleads that he is not a tenant but a mundkar, would it mean denial of the title of the landlord as contemplated by the proviso to Section 21 of the Rent Act? Both the counsel agree that the proviso is based on the rule of estoppel as is set out in Section 116 of the Evidence Act. Does this principle of estoppel laid down in Section 116 of the Evidence Act debar a person who is a defendant from pleading that he has never been a lessee. Reliance was placed on a Judgment of the Patna High Court in **Shiba Prasad Singh v. Nilabji Bali**, A.I.R. (34) 1947 Patna 45. A learned Single Judge of the Patna High Court observed that once a valid and subsisting lease is established between the parties, the lessee may be bound by the rule of estoppel and be debarred from disputing the question of title of the lessor, but that does not prevent the alleged lessee from denying the lease and his own status as a lessee. He is bound by the rule of estoppel only when he acts as a lessee and in that capacity attempts to refute the title of his own lessor. That while the principle of estoppel has been enacted in Section 116 of the Evidence Act as between lessor and lessee, it does not debar any defendant from making out the case that he has never been a lessee, and the lease

purporting to make him a lessee was never a valid document, and in that behalf, to plead such circumstances as may invalidate the lease or otherwise make it null and void. By denial of the title of the landlord would mean that the tenant disputes that the applicant is not the person who is entitled to receive rent from him or who has inducted him into the tenancy. This is the principle which flows from Section 116 of the Evidence Act. In **A.V.G.P. Chettar and Sons and others v. T. Palanisamy Gounder**, 2002 AIR SCW 2263, the Apex Court considering the rule of estoppel observed as under:-

"This Court has recently held that Section 10(2)(vii) is based on 'the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of the landlord.....".

This was a principle reiterated from the earlier Judgment of the Apex Court in **J.J. Lal Pvt. Ltd. and others v. M.R. Murali and another**, (2002) 3 S.C.C. 98, where the Apex Court observed as under:-

"As a general rule the vulnerability

of denial of title by the tenant shall be tested by reference to the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord. However, the rule of estoppel contained in Section 116 of the Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the T.N. Rent Act, a mere denial of the title of the landlord is not enough; such denial has to be "not bona fide". "Not bona fide" would mean absence of good faith or non-genuineness of the tenant's plea. If denial of title by the tenant is an outcome of good faith or honesty or sincerity, and is intended only to project the facts without any intention of causing any harm to the landlord it may not be "not bona fide". Therefore to answer the question whether an assertion of denial of the landlord's title by the tenant was bona fide or not, all the surrounding circumstances under which the assertion was made shall have to be seen."

In **S. Thangappan v. P. Padmavathy**, A.I.R. 1999 S.C. 3584, the Apex Court posed the question as under:-

"What has to be considered in a case of denial of title by a tenant is, whether there still exists any relationship of landlord and tenant inter se, as in the present case between the respondent no. 1 and the appellant. In other words by such

denial of title does liability to pay this rent to such landlord cease? Does mere denial of title is sufficient not to tender rent to such landlord or at what stage such liability ceases. These are all considerations in the context of testing the defence of a tenant in not tendering the rent to such landlord. So the question is to whom rent is payable?.....".

In that case also the Apex Court held that the definition of landlord is very wide to include any person who is receiving or is entitled to receive the rent.

6. On behalf of the appellants, their learned counsel had placed reliance on the Judgment in the case of **Dr. Ranbir Singh v. Asharfilal**, (1995) 6 S.C.C. 580. The ratio of that Judgment is that the suit for eviction was based on the relationship of landlord and tenant. The question of title cannot be gone into because what has to be established in such a suit is the privity of contract of tenancy

7. On a consideration of the discussion aforementioned what is clear is that the respondents did not deny the title of the landlord. What the respondents set up was a right conferred on them by Statute under which a person paying rent for area occupied also fell within the ambit of the provisions of the Rent Act. It is no doubt true that the mundkar application was rejected. The only dispute, therefore,

was as to for what purpose the amount was payable, has been answered in favour of the appellants. In our opinion, we see no reason to defer from the view taken by the learned Single Judge to hold that a mere plea of setting up a status would not amount to a denial of title of the landlord. We are, therefore, not inclined to interfere on that count.

8. That brings us to the second question whether there is a finding recorded by the Courts below of the relationship of landlord and tenant. In the instant case the title of the landlord was not denied. What was contended was that ground rent was being paid. That plea of payment of ground rent was rejected by the Order of the Mamlatdar, dated 23rd July 1987, when a specific finding was recorded that the applicant/respondents were occupying the suit premises as a rent paying tenant of the opponent and not as a mundkar. This Order having not been challenged, there was a finality. The Judgment was before the Rent Controller when the inquiry was being conducted. The Judgment of the Rent Controller is dated 27th December 1990. The learned Rent Controller has noted that the Mamlatdar had rejected the claim of the respondent no. 1 that she is occupying the suit premises as mundkar and that the respondent no. 1 failed to prove that there is no relationship of landlord and tenant. In our opinion that would be

sufficient for holding that the relationship of landlord and tenant was established. If that be the case, we are of the opinion that there is no question of remanding the matter for recording a finding on that count. Once it is held that raising a plea of status does not amount to denial of title of the landlord, the proviso cannot be attracted and, consequently, the question whether the plea was not bona fide need not have been gone into.

9. We find that the application for eviction was based on the ground of non-payment of rent and requiring the premises for re-construction. The Rent Controller did not at all hold an inquiry on that count. The matter will have to be remanded to the Rent Controller for disposing of the application according to law. Considering that the eviction application is of the year 1982, the Rent Controller is directed to dispose of the eviction application at any rate on or before 31st March 2004. Appeal stands disposed of accordingly. There shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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